

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EDGAR MARTIN HURLBURT, Jr.,	:	
	:	
Petitioner	:	CIVIL NO. 1:CV-03-0665
	:	
v.	:	(Judge Rambo)
	:	
KENNETH D. KYLER, <i>et al.</i>,	:	
	:	
Respondents	:	

MEMORANDUM

I. Background

Petitioner, Edgar Martin Hurlburt, Jr., an inmate at the State Correctional Institution in Huntingdon, Pennsylvania, commenced this action with a petition for writ of habeas corpus, construed by this court as a petition for relief under the provisions of 28 U.S.C. § 2254. Petitioner pled guilty to first-degree murder on February 16, 1994, in Snyder County Court of Common Pleas in Huntingdon, Pennsylvania, and was sentenced to life imprisonment without parole.

Although Petitioner did not file a direct appeal, he filed a petition for relief under Pennsylvania's Post Conviction Relief Act ("PCRA") on April 28, 1994. On May 2, 1994, the trial court appointed PCRA counsel to Petitioner, and the case was inexplicably dormant for several years, notwithstanding Petitioner's apparent efforts

to keep the case moving. Petitioner commenced the instant action while his PCRA petition was pending with the state trial court.

By order dated June 20, 2005, this court denied the habeas petition, without prejudice. The Court concluded that the petition was a mixed petition, presenting both exhausted and unexhausted claims, and the court concluded that exhaustion could be excused for inordinate delay on some, but not all, of the unexhausted issues.

Thereafter, Petitioner filed an appeal (Doc. 48) of this court's order dismissing the habeas petition, to the United States Court of Appeals for the Third Circuit, as well as a motion for reconsideration to this court. By order dated October 25, 2005 (Doc. 54), this court denied Petitioner's motion for reconsideration.

Presently before the Court are Petitioner's motion for bail pending appeal (Doc. 52) and Petitioner's "notice to the court: and, request for issued relief order" (Doc. 53), which the court will construe as a motion for default judgment on the bail motion. For the following reasons, the motions will be denied.

II. Discussion

A. Motion for Bail

Petitioner requests release on bail pending the outcome of his appeal. Although the court has authority to grant bail pending disposition of the habeas petition, such authority is narrow. *U.S. v. Stewart*, 127 F. Supp. 2d 670, 671 (2001). Bail pending

habeas review will only be granted where Petitioner has raised substantial constitutional issues with a high probability of success, and exceptional circumstances necessitate bail to render the habeas remedy effective. *Id.* By order dated September 30, 2004, this court denied Petitioner's prior motion for bail pending outcome of the case. The instant motion does not add any information to the court's consideration of the issue. Further, it does not set forth the requisite elements to support Petitioner's request. Therefore Petitioner's motion will be denied.

B. Request for Relief

Also pending is Petitioner's motion for requested relief, in which he asks the court to grant his bail motion because Respondent has not filed a response or brief in opposition. Since Petitioner's motion for bail will be denied, his request for default judgment will be dismissed and therefore denied as moot. An appropriate order will issue.

s/Sylvia H. Rambo

SYLVIA H. RAMBO

United States District Judge

Dated: December 1, 2005.

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	ORDER	